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LAWRENCE G. MALONE

General Counsel

DEBRA RENNER

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October 18, 1999

Hon. Magalie Roman Salas
Secretary
Federal Communications
Commission
445 12th Street, S.W., TWA-325
Washington, D.C. 20554

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Re: In the Matter of the Application of Bell Atlantic for Authorization
Under 271 of the Communications Act to Provide In-Region
InterLATA Service in the State of New York-CC Docket No. 99-295

Dear Secretary Salas:

Enclosed are a Motion to Extend Page Limit and File CD-ROM late and the original and six copies of the New York Public Service Commission's Evaluation of Bell Atlantic-New York's Compliance with Section 271(c) of the Telecommunications Act of 1996.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Rubin".

Penny Rubin
Managing Attorney

PB/ar

cc: Janice Myles
Policy and Programming Division
Common Carrier Bureau
(12 copies)
NYPSC Active Party List
New York Compact List

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Application by Bell Atlantic for Authorization)
Under Section 271 of the Communication Act)
to Provide In-Region, InterLATA Service in)
the State of New York)
_____)

CC Docket No. 99-295

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MOTION TO EXCEED PAGE
LIMIT AND FILE CD-ROM LATE

The New York Public Service Commission (NYPSC) respectfully requests that the Commission (1) permit the NYPSC's Evaluation of Bell Atlantic-NY's Compliance with Section 271(c)(i) to exceed 100 pages and (2) accept a timely filed version of the NYPSC's evaluation in WordPerfect format and accept a CD-ROM in Word format shortly thereafter. In support of this motion, the NYPSC states as follows:

1. The New York proceeding to investigate Bell Atlantic-NY's compliance with the 1996 Telecommunications Act §271, Case 97-C-0271, began more than 2-1/2 years ago. That proceeding included the development of a voluminous record, including transcripts of technical conferences, written affidavits, briefs and oral argument. More than 40 parties participated in the proceeding and Bell Atlantic-NY's Application before the Federal Communications Commission (Commission) includes more than two dozen boxes which contain the New York record.

2. In light of the scope of the proceeding we have undertaken, the NYPSC requires in excess of 100 pages to advise the Commission regarding our investigation of Bell Atlantic-

NY's Compliance with Section 271(c). It is our expectation that the NYPSC analysis of the record will assist the Commission, in evaluating Bell Atlantic-NY's Application. The additional information from us will provide the Commission in making the federal review process more efficient.

3. The NYPSC further requests that the Commission accept a CD-ROM version of its evaluation in WordPerfect format rather than Word format. A Word-formatted version of our filing will be submitted to the Commission shortly after our filing is made. The agency does not routinely support Word as its word processing program and the additional time will be necessary to assure that the document is correctly converted from one word processing format to the other. The Commission's review processes will not be affected by this short delay..

WHEREFORE, the NYPSC respectfully requests that the Commission waive its 100-page limit to accept a lengthier evaluation from the NYPSC and that the Commission accept a delay in the filing of the NYPSC's comments on CD-ROM in Word format, with the substitution of a Word Perfect- formatted CD Rom with the filing.

Respectfully submitted,

A handwritten signature in cursive script, reading "Lawrence G. Malone".

Lawrence G. Malone
NYS Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 19 1999

FCC MAIL ROOM

In the Matter of)
)
Petition of New York Telephone Company)
for Approval of its Statement of Generally)
Available Terms and Conditions Pursuant)
to Section 252 of the Telecommunications)
Act of 1996 and Draft Filing of Petition)
for InterLATA Entry Pursuant to)
Section 271 of the Telecommunications)
Act of 1996)

CC Docket No. 99-295

EVALUATION OF THE
NEW YORK PUBLIC SERVICE COMMISSION

Maureen O. Helmer
Chairman

Lawrence G. Malone
General Counsel

Of Counsel
Penny Rubin
Peter McGowan
Andrew M. Klein

Public Service Commission
State of New York
Three Empire State Plaza
Albany, New York 12223-1350
(518) 474-1585

DATED: October 19, 1999

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EXECUTIVE SUMMARY

By this submission, the Chairman of the New York Public Service Commission (NYPSC)¹ advises the Federal Communications Commission (FCC or Commission) that New York Telephone Company d/b/a Bell Atlantic-New York (Bell Atlantic-NY, New York Telephone Company, or BA-NY) has met the requirements of §271(c) of the Telecommunications Act of 1996 (1996 Act) in New York. Bell Atlantic-NY has met its obligation under §271(c)(1)(A) by entering into more than 75 interconnection agreements approved by the NYPSC, pursuant to §252 of the 1996 Act, with competitive local exchange carriers (CLECs) to provide access and interconnection. CLECs are providing local exchange service in New York using their own facilities and those of Bell Atlantic-NY. In addition, the record in the 2-1/2-year-long §271 proceeding (Case 97-C-0271) in New York establishes that Bell Atlantic-NY has a legal obligation, under interconnection agreements and NYPSC-approved tariffs, to provide the 14 items required under the Checklist of §271(c)(2)(B). Finally, the facts demonstrate that Bell Atlantic-NY is meeting its legal obligation to provide those 14 items.

The positions taken by the parties in our proceedings suggest that most arguments against Bell Atlantic-NY's petition will be directed in particular toward Checklist items (ii) (unbundled network elements, particularly operations support systems) and (iv) (unbundled

¹ New York State Public Service Law §12 requires the Counsel to the NYPSC, subject to the direction of the Chairman, to represent the people of the State of New York and the NYPSC in all state and federal proceedings related to matters within the NYPSC's jurisdiction. The Chairman of the NYPSC is also the chief executive officer of the New York Department of Public Service (NYDPS), and as such directs the activities of NYDPS Staff.

loops).¹ The parties contending that Bell Atlantic-NY has not satisfied items (ii) and (iv) will rely primarily on performance data² that they are simply misreading. Because the performance reports are quantitative and, on their face, arithmetic, they lend themselves to facile misuse in support of allegations of success or failure. As discussed below, however, they are not a Checklist report card and, in any event, do not support a claim that Bell Atlantic-NY is providing access to Checklist items (ii) and (iv) in a discriminatory manner.

Before discussing the performance data relating to Checklist items (ii) and (iv), we offer an overview of the NYPSC's assessment of Bell Atlantic-NY's compliance. First, NYPSC has supervised a 15-month test, conducted by outside auditor KPMG, of Bell Atlantic-NY's Operations Support Systems (OSS), its practices and procedures for serving wholesale customers, and the adequacy of its service quality and reporting. The test shows that Bell Atlantic-NY's OSS provides the functions required by §271, that its practices and procedures are appropriate, and that its service quality and reporting are satisfactory.

Testimony received from Bell Atlantic-NY and CLECs during 19 days of technical conferences similarly demonstrates that Bell Atlantic-NY is, in fact, meeting its obligations. Finally, NYPSC staff has worked continuously with Bell Atlantic-NY and the CLECs for 21 months, evaluating and monitoring performance, processes and procedures. It has now

¹ Material questions also have been raised over an unbundled loop-related aspect of Checklist item (viii) (white pages directory listing).

² These data are reported in the context of a Performance Assurance Plan, described in more detail below, which contains 122 measurement points important to the operation of a competitive local exchange market.

concluded that party and staff concerns have been adequately addressed and that the Checklist is being met.

We provide below a painstaking analysis of each Checklist item, produced by a NYPSC team of telecommunications engineers, financial analysts, economists, accountants, and attorneys. These experts examined every detail of Bell Atlantic-NY's wholesale service to CLECs. Their examination, which took more than two years, included thousands of hours of discussions with Bell Atlantic-NY competitors and with interested government agencies¹ and took into account all aspects of each issue.

In addition, an important tool for ensuring Bell Atlantic-NY's continued provision of the quality of service required by the NYPSC is the Performance Assurance Plan (PAP, the Plan), negotiated by the Department's Staff and Bell Atlantic-NY with public input. The PAP holds Bell Atlantic-NY, in a public forum, to 122 standards that collectively require it to achieve service quality that exceeds the Checklist requirements in specificity and degree. The Plan's financial incentives,² along with its very public enforcement process, ensure that Bell

¹ Including the United States Department of Justice (DOJ), the New York State Attorney General, and the New York State Consumer Protection Board.

² In accordance with the Pre-filing Statement (discussed below) and subsequent refinements negotiated with BA-NY, non-compliance with the 122 metrics would trigger up to \$270 million in annual price reductions for CLECs. Willful non-compliance with the PAP backsliding plan also could subject BA-NY to additional penalties of \$100,000 per day for each violation.

Atlantic-NY management will remain committed to Checklist compliance even after §271 approval is granted.¹

The PAP's metrics grew out of a series of NYPSC proceedings instituted before the 1996 Act's enactment. The 122 wholesale service metrics are derived from over 400 performance metrics developed in a generic carrier-to-carrier service quality proceeding and go well beyond the Checklist requirements. (For example, there are metrics that measure Bell Atlantic's performance in providing the unbundled network elements platform (UNEP) pursuant to state law, regardless of whether the Commission adopts UNEP as it has been defined in New York. As discussed more fully below, Bell Atlantic-NY's Pre-filing Statement (PFS) commits the Company to comply with all federal UNEP requirements, but recognizes that New York's UNEP commitments are a floor offering below which it cannot go.)

The PAP's 122 metrics can be allocated to Checklist items (i), (ii), (iv), (v), (vi), (xi) and (xiv).² While a passing grade on all 122 metrics would represent perfection, successful performance on critical metrics³ buttresses a finding of Checklist compliance.⁴

¹ Further, NYPSC has reserved all options under state law to remedy inadequate service, Public Serv. Comm'n v. Jamaica Water, 42 N.Y.2d 880 (1978) [upholding a PSC order that prohibited a utility with inadequate service from paying dividends to a parent]; Cases 93-C-0103 and 93-C-0033, Rochester Telephone, Opinion No. 94-25 (issued November 10, 1994) [wherein the Public Service Commission required Rochester Telephone to place all dividends in escrow until it improved service]; Hurley Water v. Public Serv. Comm'n, 122 A.D.2d 410 (1986) [wherein the Court upheld a PSC decision allowing a company a 0% rate of return until it took action to improve service].

² These are, respectively, interconnection, access to network elements, local loops, local transport, local switching, number portability and resale.

³ The PAP separately identifies the metrics that are more important to the success of a competitive local exchange market and imposes increased price reductions for their failure.

Twenty-five of the 122 metrics can be allocated to OSS performance.¹ Another 14 metrics measure the company's unbundled loops (Checklist item (iv)).

With respect to local loops, Bell Atlantic-NY's most recent data (August 1999), as reported, indicate that it "passed" 11 of 14 metric test points² relating to local loops. The data also show Bell Atlantic-NY passed all critical measures, except one that is associated with provisioning of complex loop orders.³ Of the remaining non-critical "failures," one is similarly associated with complex loop orders, and the other relates to a metric under review, which the parties have agreed needs to be modified.

⁴ BA-NY passes a metric either by serving CLECs in conformance with an "absolute standard" -- if there is no equivalent in BA-NY's retail service -- or by providing CLECs the same or better service than that which it provides to its retail operations. If BA-NY provides equivalent service it scores a 0. If its service falls slightly below a deadband, it scores -1. A failure is scored by a -2. A pass is any score better than -2 in a given month. Under the PAP some market adjustments are triggered if BA-NY scores -1 and does not improve to 0 in each of the following two months. These market adjustments reflect the NYPSC obligation to ensure wholesale service is just and reasonable under state law, and their having been incurred does not signify a failure to provide non-discriminatory access. Moreover, in examining why BA-NY has failed to pass several less significant metrics, we have discovered that some are either flawed or not relevant to an open market. Having said that, the metrics and their underlying definitions continue to be refined in the NYPSC carrier-to-carrier proceeding. Not all metric and definitional refinements will cut in BA-NY's favor.

¹ Another six non-critical measures related to OSS are under development. Although OSS performance may affect many Checklist items, we discuss them below in the context of item (ii).

² Certain metrics could not be reported in July and August because of lack of market activity or a need for additional clarification (e.g., EEL).

³ The Company's performance reflects the difficulties associated with establishing processes for coordinating more complicated provisioning activities. In this regard, through our DSL collaborative, BA-NY is expected to improve its performance under newly implemented procedures.

With regard to OSS, August 1999 data show that Bell Atlantic-NY passed all critical metrics¹ and passed 17 of 25 in all. Two of the "failed" metrics are among those the parties have agreed should be revised. The remaining six are measured by absolute standards, rather than by comparison to Bell Atlantic-NY's own retail performance. For several reasons, Bell Atlantic-NY's failure to meet these "absolute standards" in August should not be read as a failure to provide non-discriminatory access under §271.²

¹ These data, of course, are consistent with KPMG's finding that the OSS interface was fully integratable and operational and with competitors' use of the interface.

² The concept of non-discriminatory access appears to have originated in the "essential facility doctrine." United States v. Terminal R.R. Ass'n, 224 U.S. 383 (1912) [wherein the court held that a monopolist had to allow competitors non-discriminatory access to facilities needed for entry by railroads into St. Louis]. The essential facility doctrine, by asking whether it is technically and economically feasible for a defendant to provide competitors non-discriminatory access, implicitly raises an issue of intent to discriminate. Compare MCI Communications v. American Telephone & Telegraph, 708 F.2d 1081, 1132-1133 (7th Cir.), cert. denied, 464 U.S. 891 (1983) [wherein the court upheld a jury determination that it was technically and economically feasible for AT&T to allow MCI interconnection and AT&T had no legitimate reason for denying MCI access to AT&T's distribution facilities] with City of Anaheim v. Southern California Edison Co., 955 F.2d 1373 (9th Cir. 1992) [wherein the court held that an electric utility had a legitimate reason for denying a city access to its limited transmission capacity].

Inasmuch as the NYPSC has taken the position that under the New York Public Service Law BA-NY must provide CLECs "just and reasonable" wholesale service, the mere absence of intent to discriminate would not satisfy BA-NY's obligation. Nor does absence of an intent to discriminate indicate compliance with the Checklist. Nonetheless, it is worth noting that BA-NY has put forth a prolonged, significant effort to provide non-discriminatory, as well as "just and reasonable," service to CLECs.

First, as discussed above, these metrics are not among those that are most important to opening the local market to competition.¹ Second, Bell Atlantic-NY is in striking distance of passing several of the failed metrics; the others generally involve low volumes of activity. In fact, for the most part, the low-volume metrics will remain at low volumes even in a fully robust market and, therefore, will not affect mass market entry. Finally, a simple totalling of performance measure passes or failures is not an accurate basis on which to determine Checklist compliance or non-compliance; that complex determination should take account as well of the KPMG test, our staff analyses and our technical conferences. Thus, we find Bell Atlantic-NY is providing access to OSS in compliance with Checklist item (ii).

If Bell Atlantic-NY's PAP, which will be presented to the NYPSC on October 27, 1999 for final approval, had been in place unadjusted for August 1999, Bell Atlantic-NY would have had to reduce its prices to CLECs by approximately \$5 million out of \$17.3 million at stake during the month.² Like the metric failings themselves, the associated payments are not indicative of Checklist non-compliance because, among other things, they

¹ Prioritizing metrics comports with KPMG's evaluation of the performance under the OSS test plan criteria. As KPMG observed:

"we must point out that the criteria are not all of equal importance. Some are less important as stand-alone measures, but are important when taken as a group. Other criteria are significant in their own right. A simple numerical counting or averaging of results by result category is misleading and should be avoided." KPMG Final Report, Executive Summary, II6, ¶5.5.

² Because certain PAP metrics are being refined through the carrier-to-carrier proceeding, this figure is preliminary.

are nearly all attributable to Bell Atlantic-NY's performance on non-critical metrics, on metrics that the parties agree need refinement, and on stringent absolute targets that relate to NYPSC requirements under the Public Service Law that go beyond Checklist compliance. They do not suggest discriminatory service pursuant to the Checklist.

The following detailed analysis of Bell Atlantic-NY's performance on each Checklist item demonstrates that it has complied with §271(c)(2)(B). Bell Atlantic-NY should be on notice, however (and it has so acknowledged), that it must satisfy the additional service standards found in its Performance Assurance Plan not only after but, in some cases, before¹ long distance entry.

In sum, the quality of wholesale service competitors are receiving is non-discriminatory. Competitors are entering the market and the major players are increasing their presence in New York. Because Bell Atlantic-NY is not satisfying all of the 122 metrics found in its Performance Assurance Plan, we cannot say that its wholesale service is perfect, but the 1996 Act does not mandate perfection. For the numerous reasons set forth below, Bell Atlantic-NY has satisfied the 14 requirements for long distance entry set forth in §271(c)(2)(b). Postponement of long distance entry will not serve the consumer; neither will simply waiting for wholesale performance that goes beyond the requirements of the 1996 Act.

¹ Irrespective of whether BA-NY satisfies each and every Checklist item (ii) metric, if it is not, on average for the 3 months prior to the date of long distance entry, flowing through 80% of all CLEC orders, or 95% of orders designed to flow through, it will provide bill credits of \$2.5 million to CLECs and it will continue to pay \$2.5 million each quarter (even if it passes all other 122 metrics) until this flow through level is achieved.

BACKGROUND

On February 13, 1997, New York Telephone Company¹ filed a draft application under §271, along with a Statement of Generally Available Terms and Conditions (SGAT). After a number of technical conferences, collaborative meetings, and technical and legal analyses,² NYPSC Administrative Law Judge Eleanor Stein issued a ruling identifying the status of the record, which generally concluded that while New York Telephone had made a prima facie case regarding certain offerings, it failed to carry its burden regarding others.³ The ruling concluded that Bell Atlantic-NY had not met its burden of proof regarding commercial volume availability, procedure standardization, timeliness, and measuring parity.

Following this ruling, the New York Department of Public Service (NYDPS)⁴ began to develop a plan for moving Bell Atlantic-NY's compliance forward. Staff convened a number of collaborative sessions to work out technical details associated with development of a working Operations Support System (OSS). The practical aspects of making unbundled network elements available were first addressed through collaborative sessions with staff, Bell Atlantic-NY and the competitors. Numerous OSS issues were resolved in this forum,

¹ At the time, New York Telephone Company was a subsidiary of NYNEX Corporation. It now does business as Bell Atlantic-New York.

² BA-NY's 271 Application, Appdx. C, Vol. 1, Tabs 1-110.

³ Administrative Law Judge Eleanor Stein, with Administrative Law Judges Jaclyn A. Brilling and Judith A. Lee presided over the NYPSC proceeding. Case 97-C-0271, Section 271 Proceeding, Ruling Concerning Status of the Record (issued July 8, 1997), Bell Atlantic-NY Application, Appdx. C, Vol. 9, Tab III.

⁴ The NYDPS Staff team was led by Janet Deixler, Daniel Martin, Margaret Rubino, John Rubino, Wayne Brindley, John Coleman, Richard Brash, Richard Schuler, Robert Soika, Linda Dorsey and Fred Barney.

including an agreement on business rules that would govern the development by CLECs of systems to interface with those of Bell Atlantic-NY.

Subsequently, following consummation of the Bell Atlantic/NYNEX merger, New York Telephone filed a supplemental §271 application. Another round of filings and technical conferences ensued.¹ It was after completion of this process that Bell Atlantic-NY agreed to make additional commitments that it would fulfill in connection with its application for §271 approval.

On April 6, 1998, Bell Atlantic-NY filed its Pre-Filing Statement of Bell Atlantic-NY with the New York Commission.² Most significantly, the Pre-Filing Statement included Bell Atlantic-NY's commitments to:

- provide combinations of elements, including UNEP as a minimum service offering, regardless of the outcome of the litigation in Iowa Util. Bd. vs. FCC;
- engage in third-party testing, supervised by the NYDPS, of Bell Atlantic-NY's OSS to ensure the company had made the necessary changes to its systems to accommodate pre-ordering ordering, provisioning, maintenance and repair, and billing for CLEC customers;

¹ Technical conferences were on-the-record hearings, albeit without the formal procedures and rules of evidence normally applied at New York Commission hearings.

² BA-NY Appdx C, Vol. 28, Tab 403.

- establish a self-effectuating system, to be supervised by the NYPSC, that will provide significant incentives for Bell Atlantic-NY to maintain an open market and prevent backsliding.

Then-Chairman John F. O'Mara wrote a letter to then-Deputy Chairman Maureen O. Helmer recommending that if Bell Atlantic-NY met all the steps outlined in its Pre-filing Statement, Bell Atlantic-NY should be permitted to enter the long distance market.

In March 1999, in conjunction with the Pre-filing discussions, a Request for Proposals (RFP) to select a consultant to perform the OSS test was released. The OSS test was to be conducted in two phases. Phase 1 of the test was to develop a detailed and comprehensive plan (later to be known as the Master Test Plan) to evaluate and test the OSS interfaces and the adequacy of Bell Atlantic-NY's processes, procedures, and documentation to allow CLECs to access and use these systems. Phase 2 of the test was to (1) build the interface and assess the ease or complexity of developing interface software, and (2) execute the Master Test Plan. Use of a pseudo-CLEC to test the system ensured independence and neutrality.

KPMG Peat Marwick (KPMG) was selected as the pseudo-CLEC, and Hewlett Packard was hired to build the interface between KPMG and Bell Atlantic-NY. The test was completed with the release of KPMG's final report on August 6, 1999, from which it can be concluded that Bell Atlantic-NY's OSS were commercially available and sufficient to handle reasonable, anticipated commercial volumes.¹

¹ BA-NY KPMG OSS Evaluation Project, Final Report, Version 2.0, submitted by KPMG, August 6, 1999. Checklist item (ii) below provides greater detail on the test and findings.

In addition, inter-carrier service quality standards were developed, and continue to be refined, in the New York Commission's carrier-to-carrier service quality proceeding.¹ To ensure that the company's metrics are reported reliably in accordance with the NYDPS definitions, NYDPS Staff and KPMG reviewed the adequacy of internal controls surrounding the data collection process. In addition, on a monthly basis, NYDPS Staff verifies that Bell Atlantic-NY's reported results conform to the carrier-to-carrier definitions.²

Since the April 1998 Pre-filing Statement, our staff continued to meet with the parties to identify issues, and worked with Bell Atlantic-NY, the competitors, and the consultants on solutions, using a variety of both formal and informal processes, including workshops, collaborative meetings, technical conferences, conference calls, and oral argument before the Chairman.

Bell Atlantic-NY's §271 filing reflects the effort of the NYDPS Staff, the applicant, the competitors, and the government parties to resolve complex, highly technical issues associated with moving a marketplace from a tightly regulated monopoly environment to one

¹ Case 97-C-0139, Service Quality Standards for Telephone Companies, Order Adopting Inter-carrier Service Quality Guidelines (issued February 16, 1999) and Order Establishing Permanent Rule (issued June 30, 1999). The standards that have been adopted by the Commission to date were extensively analyzed by all interested parties in a collaborative process. This effort is ongoing, as a number of additional standards remain under development, and existing ones are refined. While these standards and metrics are useful in assessing BA-NY's compliance with the §271 checklist, one must keep in mind that they were not devised for that specific purpose; rather, they grow out of the New York Commission's general authority over service quality. Accordingly, they go beyond the §271 requirements.

² The steps to ensure metric reliability are described further in the Monthly Market Adjustment Mechanism section of the Performance Assurance Plan, which is discussed in Appendix A.

where competitors are actively engaged in entering the market. Thanks in large part to that joint effort, the process is now ready to take its next step.

**BELL ATLANTIC-NY COMPLIANCE WITH §271(c)(1)(A) -
PRESENCE OF FACILITIES-BASED COMPETITION**

A Bell Operating Company (BOC) seeking Commission approval to provide in-region interLATA services must demonstrate that it satisfies the requirements of §271(c)(1)(A) or of §271(c)(1)(B) (commonly referred to as Track A and Track B, respectively).¹ Bell Atlantic-NY seeks Commission approval to enter the New York interLATA market under Track A.

The NYPSC has approved, pursuant to §252 of the 1996 Act, 76 binding interconnection agreements between New York Telephone and unaffiliated competing providers of telephone exchange service.² These agreements require New York Telephone to provide "access and interconnection to its network facilities for the network facilities of unaffiliated competing providers [to] . . . residential and business customers."³ The agreements provide for access to Bell Atlantic's facilities and elements. In particular, Bell Atlantic-NY cites its interconnection agreements with AT&T, MCI Worldcom, and Cablevision Lightpath as showing it has satisfied the Track A requirements.⁴ These agreements were approved by the NYPSC under §252 of the 1996 Act.

¹ 47 U.S.C. §271(a).

² Eight additional agreements are awaiting NYPSC action.

³ 47 U.S.C. §271(c)(1)(A).

⁴ BA-NY Application, pp. 5-8.

Bell Atlantic-NY satisfies the §271(c)(1)(A) requirement. The record establishes that Bell Atlantic-NY has entered into many binding interconnection agreements approved by the NYPSC, pursuant to §252. These agreements provide unaffiliated competing providers access and interconnection to New York Telephone's network facilities for telephone exchange service offered exclusively or predominantly over the CLEC's facilities to residential and business customers. The interconnection agreements specify the rates, terms, and conditions under which New York Telephone will provide access and interconnection to its facilities. AT&T, MCI Worldcom, and Cablevision Lightpath, among others, are currently receiving access and interconnection to Bell Atlantic-NY's network facilities pursuant to their respective interconnection agreements.

The Bell Atlantic-NY Application includes exhibits displaying its view of the status of local competition in New York¹. The data in these exhibits appear reasonably consistent with our 1998 data in those categories in which we maintain such data.² (We do not collect data in three categories reported in Exhibit 2--CLEC loops (unbundled and platform), CLEC interconnection trunks, and CLEC ported numbers.³)

¹ BA-NY Application, Attachment A, Exhibits 2-6.

² The NYPSC prepares an analysis of local exchange service competition in New York State, based upon information in annual competition monitoring reports submitted by Bell Atlantic-NY, Frontier Telephone of Rochester, and the competitive local exchange carriers. Our most recent information reflects the status of competition at the end of 1998. BA-NY's analysis is more current.

³ The NYPSC has determined that it is important to balance the need for information with the need to make it as easy as possible for competitors to do business in New York and has limited carriers' reporting obligations accordingly.

BELL ATLANTIC-NY COMPLIANCE WITH SECTION 271(c)(2)(B) -
THE COMPETITIVE CHECKLIST

Introduction

In this section, we present our assessment of Bell Atlantic-NY's compliance with each of the 14 items in the §271(c)(2)(B) competitive checklist. For each item, we first briefly review the legal standard, comprising the pertinent portions of the 1996 Act and, as appropriate, actions of the FCC and of the NYPSC. We then summarize the record of our §271 proceeding, describing the positions of Bell Atlantic-NY and other parties and including, where warranted, highlights of the KPMG Report and of Bell Atlantic-NY's performance. We conclude each item with our findings, based on the record as a whole, regarding Bell Atlantic-NY's legal obligation to provide the checklist item and its fulfillment of that obligation. Because pricing was considered by the NYPSC in separate proceedings, at the end of this section we provide a description of those proceedings and their results.

Checklist Item (i)--Interconnection in Accordance with the
Requirements of §§251(c)(2) and 252(d)(1)

TRUNKING

I. The Legal Standard

A. The 1996 Act

Checklist item (i) requires a BOC to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).¹ Section 251(c)(2) states that interconnection "for the transmission and routing of telephone exchange service and exchange

¹ 47 U.S.C. §271(c)(2)(B)(i).

access" must be provided "at any technically feasible point within the carrier's network," and must be "at least equal in quality to that provided by the local exchange carrier to itself . . . or [to] any other party to which the carrier provides interconnection." Interconnection must be provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252."

B. The FCC Orders

Competing carriers have the right to deliver terminating traffic at any technically feasible point on the incumbent LEC network and such carriers may choose any technically feasible method of interconnection at a particular point.¹ Technically feasible interconnection includes virtual and physical collocation and meet point arrangements, among other methods.²

Incumbent LECs must "design interconnection facilities to meet the same technical criteria and service standards . . . that are used within their own networks."³ The Act's requirement that interconnection be provided on "just, reasonable, and nondiscriminatory" terms and conditions means that trunking must be provided by an incumbent to a competitor in a manner that is no less efficient than the way it provides trunking to itself.⁴

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket Nos. 96-98 and 95-185 (Local Competition First Report and Order), (released August 8, 1996) ¶209, citing 47 U.S.C. §251(c)(2).

² Id., ¶553.

³ Id., ¶224.

⁴ Id., ¶218.

C. State Application of Legal Standards

The Pre-Filing Statement committed Bell Atlantic-NY to (1) eliminate all past due network trunk interconnection orders by June 1998; (2) provide all appropriately forecast interconnection trunks in 18 days, except orders greater than 192 trunks, complex jobs, and initial deployments of new CLEC/Bell Atlantic-NY interconnection trunk groups; and (3) provide a general service offering of two-way trunks to both end offices and tandems under specified conditions.¹ In addition, Bell Atlantic-NY undertook to ensure its Network Data Mover System was available to all CLECs for the purpose of ordering interconnection trunks.

II. The NYPSC Record

Bell Atlantic-NY states that it has provided 37 competitors with 349,000 interconnection trunks.² The company asserts that, even with the growing demand, it has met 99% of the due dates for interconnection trunks in the first seven months of 1999.³ It adds that it currently has no backlog of orders and has the capacity to add interconnection trunks to its switches by more than 600,000 trunk terminations this year and another half million next year.⁴

¹ Pre-Filing Statement, BA-NY Application, Appdx. C, Vol. 28, Tab 403, pp. 12-13.

² BA-NY Application, p. 12.

³ Id., p. 13.

⁴ Id.

At the technical conference held June 14-15, 1999, several parties expressed concern about untimely provisioning of interconnection trunks.¹ MCI's witness testified that late interconnection trunking provisioning forced costly delays in augmenting facilities to serve large customers.² The Consumer Protection Board asserted that Bell Atlantic-NY failed to provide interconnection trunks on time for CLECs, according to the PSC standard established for on-time completion, a critical measure.³ In contrast, Intermedia asserted that it had worked extensively with Bell Atlantic-NY and had resolved its concerns pertaining to trunking.⁴

III. Findings

A. Legal Obligation to Provide Checklist Item

Bell Atlantic-NY currently provides trunking pursuant to PSC-approved interconnection agreements and its tariffs.⁵

¹ In addition, Teligent, in a March 1999 letter to NYDPS raised similar concerns. BA-NY Application, Appdx. C, Vol. 40, Tab 608. However, these earlier concerns were not formally raised in the final phase of the case.

² Tr. 2971, BA-NY Application Appdx. C, Vol. 51, Tab 775.

³ CPB Brief, p. 10, BA-NY Application, Appdx. C, Vol. 61, Tab 942.

⁴ Intermedia Brief, p. 4, Id. Vol. 62, Tab 950.

⁵ Lacouture/Troy Declaration, BA-NY Application, Appdx. A, Tab 1, ¶7, citing Attachment B.

B. Verification of Checklist Compliance

Bell Atlantic-NY currently provides trunking consistent with the requirements of §§251(c)(2) and 252(d)(1); that is, at any technically feasible point, at least equal in quality to that provided itself, and at reasonable nondiscriminatory rates.

In the course of the NYPSC review of trunking, competitors and Staff flagged compliance problems related to provision of line-side interconnection, two-way trunking, trunk blockage, and timeliness of provisioning. Bell Atlantic-NY has addressed these problems by offering line-side and two-way trunking pursuant to tariff, and increasing the availability of trunk installations to alleviate blockage.

We have reviewed the company's performance measurements for key areas related to its trunking performance,¹ including the following: ordering,² provisioning,³ maintenance and repair,⁴ and network performance.⁵ There were virtually no failures for July and August 1999; thus, Bell Atlantic-NY's greater attention to trunking has borne fruit. Finally, we observe in the market that a considerable number of CLECs--37 according to the company's latest

¹ BA-NY Dowell/Canny Affidavit, BA-NY Application, Appdx. A, Tab 3.

² The ordering metrics consisted of percent on time firm order confirmations, percent on time design layout record, and percent on time trunk ASR reject.

³ The provisioning metrics consisted of percent missed appointment, average delay days-total, missed appointment-facilities, percent orders held for facilities within 15 days, and percent installation troubles within 20 days.

⁴ The maintenance and repair measures included mean time to repair-total and percent repeat reports within 30 days.

⁵ The network performance measures included number of trunk groups blocked two months and number of final trunk groups blocked three months.

figures--are interconnected with Bell Atlantic-NY with a significant number of trunks and minutes exchanged: 349,000 trunks and 2.5 billion minutes per month.¹

COLLOCATION

I. The Legal Standard

A. The 1996 Act

As described in the legal standard section above, Checklist item (i) requires a BOC to provide "interconnection in accordance with the requirements of §§251(c)(2) and 252(d)(1)."

B. The FCC Orders

In order to establish compliance with §271(c)(2)(B)(i), "a BOC must demonstrate that it can furnish collocation."² A BOC must have processes and procedures in place to ensure the availability of physical and virtual collocation arrangements in accordance with §251(c)(6)³ and applicable FCC rules.⁴ On March 31, 1999 the FCC adopted new minimum collocation rules, further opening collocation opportunities to competitors. Generally, the FCC requires incumbent LECs to provide competitors shared cage and cageless collocation;

¹ BA-NY Application, p. 12.

² Application of BellSouth Corporation, et al., for Provision of In-region, Inter-LATA Services in Louisiana, CC Docket No. 98-271 (October 13, 1998), Memorandum Opinion and Order (Second BellSouth Louisiana Order), ¶62.

³ 47 U.S.C. §251(c)(6). Incumbent LECs must provide physical collocation unless the LEC demonstrates to the state commission that "physical collocation is not practical for technical reasons or because of space limitations," in which case virtual collocation may be provided. Id.

⁴ 47 C.F.R. §§51.321-23 (implementing 47 U.S.C. §251(c)(6)).

safety requirements no more stringent than the incumbent's; 24 x 7 access to their equipment; and access to unused or adjacent central office space as technically feasible.¹

C. State Application of Legal Standards

The Pre-Filing Statement committed Bell Atlantic-NY to provide virtual collocation within 105 days and to meet a 76 day interval for physical collocation, depending upon forecasting and order types.² In addition, for the use of collocation to access and combine unbundled network elements, the PSC approved a menu of methods, including several physical collocation options comprising large and small cages, cageless, shared, and virtual collocation.³ Bell Atlantic-NY's tariff filings in compliance with the PSC determination and subsequently in compliance with the FCC Advanced Services Order are discussed in more detail in connection with combinations of unbundled network elements, in Checklist item (ii), below.

Following the FCC Advanced Services Order, Bell Atlantic-NY filed tariff amendments at the NYPSC pursuant to the FCC collocation order, introducing cageless collocation open environment (CCOE) and withdrawing its Collocation Line of Sight Escort (CLOSE) service; proposing rates and regulations for adjacent structures; and modifying

¹ Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 99-48 (March 31, 1999), First Report and Order and Further Notice of Proposed Rulemaking, (Advanced Services First Report and Order).

² Pre-Filing Statement of Bell Atlantic-NY, BA-NY Application, Appdx C, Vol. 28, Tab 403, pp. 16-20.

³ Case 98-C-0690, Recombination of Network Elements, Opinion No. 98-18, BA-NY Application, Appdx D, Vol. 6, Tab 121.

existing collocation offerings, including introduction of a site survey/report fee. On August 31, 1999 the PSC ordered Bell Atlantic-NY to make further modifications to ensure compliance with the Advanced Services Order: removing from its tariff requirements of a 10-foot neutral zone and separate lineup limitations; requiring provision of central office floor plans and CLEC tours; shortening the installation interval for cageless collocation to 76 business days; and offering security training for CLEC personnel. Bell Atlantic-NY filed a revised tariff.

II. The NYPSC Record

Bell Atlantic-NY asserts it has placed in service 776 collocation sites in central offices throughout New York State.¹ The company states that most of the collocation arrangements are for physical collocation; however, it also has provided 26 virtual collocation arrangements.² Bell Atlantic-NY indicates that each of the collocation offerings required by the FCC Advanced Services Order is available under tariff.³

Bell Atlantic-NY states that it provides collocation in a timely manner. From May through July 1999, the company asserts that its delivery of collocation arrangements was

¹ BA-NY Application, p. 14, citing Lacouture/Troy Decl. ¶¶29 and 46; Taylor Decl., ¶46, and Att. A, ¶¶21, 22 and Exh.5.

² BA-NY Application, pp. 14, 15, citing Lacouture/Troy Decl., ¶¶29, 45, 46, 52; Taylor Decl., ¶21.

³ BA-NY Application, p. 15, citing Lacouture/Troy Decl., paras. 27-28, 31-32, 41, 48-50; see also PSC Cases 99-C-0715 et al., Order Directing Tariff Revisions (issued August 31, 1999), Appdx. I, Tab 19.

almost 100% on time.¹ Bell Atlantic-NY states that there are no backlogs of any kind and that it is on track to fill pending orders on time.²

ACI, Covad and Northpoint challenge the Bell Atlantic-NY measurement of on-time completion from the time the cage is turned over to the CLEC. These parties claim that they often have to accept cages that are incomplete or need repair.³ Covad further asserts that Bell Atlantic-NY has no formal process in place to correct deficiencies in such a cage after the cage has been accepted by the CLEC.⁴

Competitors also assert Bell Atlantic service is not timely: ACI claims that it has experienced delays in provisioning of collocation,⁵ and ACI and Northpoint state that Bell Atlantic-NY has not provided service billing numbers or carrier facility assignments in a timely manner.⁶ Intermedia, in contrast, asserts that Bell Atlantic-NY has addressed the problems with the collocation planning process and has eliminated most concerns.⁷

¹ BA-NY Application, p. 15-16, citing Lacouture/Troy Declaration., ¶¶33 and 49.

² Id.

³ ACI Brief, p. 13 [ACI's claim that there were delays in provisioning was based upon April 1999 data], Covad Brief, p. 17; Northpoint Brief, p. 9, BA-NY Application, Appdx. C.

⁴ Covad Brief, p. 17, Id., Vol. 61, Tab 949.

⁵ ACI Brief, p. 13, Id., Vol. 61, Tab 957.

⁶ ACI Brief, pp. 13, 16, Northpoint Brief, pp. 9-10, Id.

⁷ Intermedia Brief, p. 2, Id., Vol. 62, Tab 950.

III. Findings

A. Legal Obligation to Provide Checklist Item

Bell Atlantic-NY currently provides physical and virtual collocation under approved interconnection agreements and tariffs, consistent with FCC and NYPSC orders.¹

B. Verification of Checklist Compliance

We find that Bell Atlantic-NY is in compliance with §271(c)(2)(B)(i). The NYPSC recently reviewed the Bell Atlantic-NY's tariff NYPSC Tariff No. 914, which it filed in compliance with the Commission's Advanced Services Order.² Bell Atlantic-NY was directed to file tariff revisions, consistent with the NYPSC's order. Based upon this filing, Bell Atlantic-NY is in compliance with the FCC Order and the 1996 Act.³

Bell Atlantic-NY states that from May through July 1999, it met the committed due date for over 98% of physical collocation arrangements.⁴ Bell Atlantic-NY also completed six of seven virtual collocation orders on time and currently has no backlog of orders.⁵ Bell Atlantic-NY has indicated that it will commit additional resources if necessary to meet demand. We have also evaluated Bell Atlantic-NY's ability to provision a collocation

¹ BA-NY Application, Lacouture/Troy Decl., ¶28.

² PSC Cases 99-C-0715 et al., Order Directing Tariff Revisions, (issued August 31, 1999), BA-NY Application, Appdx. I, Tab 19.

³ BA-NY is continuing to make minor revisions to the tariff.

⁴ BA-NY Lacouture/Troy Declaration, (September 21, 1999), BA-NY Application, Appdx. A, Tab 1, ¶33.

⁵ BA-NY Lacouture/Troy Declaration (September 21, 1999), BA-NY Application, Appdx. A, Tab 1, ¶49.

installation based on a review of six service measures.¹ Bell Atlantic-NY's performance has improved over the past four months, and for August 1999 it passed all PAP measures relating to collocation. Therefore, we find that Bell Atlantic-NY is currently provisioning collocation in a timely manner.

Regarding the parties' view that they are forced to take cages that are not properly finished, Bell Atlantic-NY admits that collocation cages may not be complete on the day they are turned over to the CLEC but says it has taken steps to address the quality of its vendors' work by performing checks of all installations, instead of only spot checks. Finally, the Company has developed a checklist to be used to audit the quality of cage turnovers. If a CLEC does accept the collocation installation, problems and all, and commences serving its customers, it suffers no competitive harm. Therefore, we find that Bell Atlantic-NY is timely providing collocation cages to competitors. Bell Atlantic-NY has also addressed the issues of the delayed service billing numbers and carrier facility assignments.²

* * *

For the foregoing reason, we verify compliance with Checklist item (i).

¹ The service measures that we reviewed are: percent on time response to request for physical collocation, percent on time response to request for virtual collocation, percent on time-physical collocation, percent on time-virtual collocation, average delay days-physical, and average delay days-virtual.

² The company stated that it proactively provides service billing numbers to every data CLEC whether or not it was requested. BA-NY Brief, BA-NY Application, Vol. 61, Tab 941, p. 28.

Checklist item (ii)--Nondiscriminatory Access to Network Elements

This section addresses access to Bell Atlantic-NY's Operations Support Systems and access to combinations of unbundled network elements.

OPERATIONS SUPPORT SYSTEM (OSS)

I. The Legal Standard

A. The 1996 Act

Item (ii) of the §271 competitive checklist requires a BOC seeking approval to offer interLATA services to provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." Section 251(c)(3) of 47 U.S.C. requires the incumbent LEC to "provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory . . ."

B. FCC Orders

In its Local Competition First Report and Order, the FCC identified the Operations Support Systems (OSS) supporting daily operations of the telecommunications infrastructure as one of the network elements that must be provided on a nondiscriminatory basis pursuant to section 251(c)(3).¹ The FCC determined that "nondiscriminatory access to these systems,

¹ Local Competition First Report and Order ¶¶516-517 1374; Local Competition Second Reconsideration Order ¶5.